stacks of grain or hay on the confines of his land that thereby, in a legal point of view, he becomes a contributor to a fire occasioned by negligence on the land of his neighbor. By such an act it is true he takes the risks of the consequences of an accidental fire on the contiguous premises, but not of a neglect which he can be called upon neither to anticipate or to guard against. In the leading case in Illinois it is assumed that the same duty which will compel the railway company to clear its roadway of combustibles, imposes an equal obligation on the owner of the contiguous land; but the distinction between the cases is obvious: the company uses a dangerous agent and must provide proper safeguards, the land-owner does nothing of the kind and has a right to remain quiescent.

The plaintiff should have judgment.

Supreme Court of Illinois.

JOHN L. MARSH *v.* FAIRBURY, PONTIAC & NORTH-WESTERN RAILWAY CO.

The specific performance of a contract is a matter not of absolute right in the party, but of sound discretion in the court.

Railroad companies are incorporated not for the promotion of mere private ends, but in view of the public good they may subserve; hence, contracts with them which cannot be specifically enforced without interfering with the rights of the public, will not in equity be enforced.

BILL in equity filed in the Livingston county Circuit Court, setting forth a written contract made by complainant with the defendant, by which it was alleged, that in consideration of the grant by complainant of the right of way for the railway across his land and the procurement of sufficient ground for passenger and freight depots, and for main and side tracks, the company among other things agreed to locate its passenger and freight depots upon the land of complainant, and at no other point. The bill further alleged that the complainant had secured the right of way for said company pursuant to the contract, and that it had built and was operating its road thereon, and that he had procured sufficient ground for its passenger and freight depots, which the company was at liberty to use and occupy, and he further offered to fulfil every other portion of the contract upon his part to be performed;

but that the company, in violation of its agreement, was about to locate its passenger and freight depots in another part of the town, about a mile east, and refused to erect them upon the land of complainant. That he owned a large number of lots where by the contract the depots should be built, and the prospective advancement in value of these lots was the main inducement that prompted him to enter into the contract.

The bill asked for the specific performance of the contract, and prayed an injunction against the erection and use of any passenger and freight depots in the town of Fairbury, outside of the ground named in the contract.

To the bill a demurrer was interposed.

The opinion of the court was delivered by

SHELDON, J.—This was a bill in Chancery filed to enforce the specific performance of a contract made by the Fairbury, Pontiac & North-Western Railway Company, to locate passenger and freight depots of said road in Marsh's addition to Fairbury and at no other point in said town. The court below sustained a demurrer to the bill and dismissed it. This is not a case which concerns merely the private interests of two suitors. It is a matter where the public interest is involved. Railroad companies are incorporated by authority of law not for the promotion of mere private ends, but in view of the public good they subserve. It is the circumstance of public use which justifies the exercise on their behalf of the right of eminent domain in the taking of private property for the purpose of their construction. They have come to be almost a public necessity, the general welfare being largely dependent upon these modes of inter communication, and the manner of carrying on their operations. The specific execution of a contract in equity, is a matter not of absolute right in the party, but of sound discretion in the court, and in deciding whether specific performance should be enforced against a railway company, the court must have regard to the interests of the public: *Raphall* v. *Railway Co.*, Law Rep. 2 Eq. Cases 37. The location of railroad depots has much to do with the accommodation of the wants of the public. And when once established a change of affairs may require a change of location in order to suit public convenience. We cannot admit that an individual is entitled to call for the interference of a court of equity to compel a railroad company to

locate unchangeably its depot at a particular spot to subserve the private advantage of such individual. Railroad companies in order to fulfil one of the ends of their creation, the promotion of the public welfare, should be left free to establish and re-establish their depots wheresoever the accommodation of the wants of the public may require. To grant the relief asked for by the complainant, we would regard as against public policy, and he must be left for whatever remedy he may have to his suit at law for damages. The court below properly sustained the demurrer and dismissed the bill.

Supreme Court of Michigan.

BEAL *v.* CHASE AND THE ANN ARBOR PUBLISHING COMPANY.

A contract by the vendor of a good-will, &c., not to engage in a special business within the state, so long as the vendee should continue in the said business, is not void as in restraint of trade, and may be enforced by a court of equity.

BILL in equity for injunction, &c. On appeal from Washtenaw Circuit Court. The facts sufficiently appear in the opinion of the court, which was delivered by

CAMPBELL, J.—There have been two appeals in this case. The last one was from a decree taken while the former was pending in the Supreme Court, and was made as an additional decree upon no new hearing, and upon the case as presented to the Circuit Court when the first decree was made. As the statute expressly declares that on a chancery appeal "all proceedings shall be stayed until otherwise ordered by the Supreme Court" (Comp. L. § 5181), a majority of us think the Circuit Court had no power to make the second decree, and that it should be reversed, but without costs, as the return was not duplicated and the second decree was made on the judge's own motion. We do not discuss the questions covered by it.

Upon the first decree the court have arrived at a substantial agreement, although not agreeing in all respects in the reasons on which their action will be based. They will content themselves with as brief a reference as will make their views intelligible.

The bill was filed to restrain the alleged violation of rights secured to complainant in connection with a sale to him by defend ant Chase of a printing and publishing business and certain copy-